

Montana Water Court  
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**FILED**  
07/06/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0663-R-2022  
Lambert, Kathryn  
18.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANTS: Cassidy B. Freeman Trust; Clark D. Freeman Trust;  
Crispin M. Freeman Trust

**CASE 43B-0663-R-2022**  
43B 125746-00

OBJECTORS: United States of America Department of Agriculture  
Forest Service

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following remarks:

AS OF 09/11/2012 , THIS WATER RIGHT APPEARS TO BE OWNED BY FREEMAN CRISPIN M TRUST ,  
PO BOX 1295 , LIVINGSTON, MT , 59047-1295.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS  
TO BE ON FEDERAL LAND.

The United States of America (USDA Forest Service) objected to this claim. On April 18, 2023 Lee A. Freeman, Jr, on behalf of the Crispin, Clark, and Cassidy Freeman Trusts, filed a Motion To Clarify Claimed Water Right. On April 19, 2023 the parties filed a Stipulation To Resolve Objection. These documents are viewable in the Court's FullCourt Enterprise case management system.

### **APPLICABLE LAW**

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

"Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken." Rule 2(c), U.D.C.R.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

### **FINDINGS OF FACT**

1. As the Crispin M. Freeman Trust is a claimant, the ownership remark concerning the Trust should be removed as moot.
2. The Preliminary Decree states that the point of diversion and place of use legal descriptions for this claim are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	11	3S	11E	PARK
S2	11	3S	11E	PARK
W2	14	3S	11E	PARK

The point of diversion and place of use legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	11	3S	11E	PARK
S2	11	3S	11E	PARK
E2SW	14	3S	11E	PARK
NENWSW	14	3S	11E	PARK

The remark concerning part of the place of use being on Federal land should be removed as addressed and resolved.

3. The point of diversion and place of use originally claimed as the W2 section 14, now refined to the E2SW section 14, also includes an unnamed tributary to Little Mission Creek. The following source clarification remark should be added: SOURCE INCLUDES AN UNNAMED TRIBUTARY OF LITTLE MISSION CREEK.

#### CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court grant the Motion To Clarify Claimed Water Right and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

Service Via USPS Mail:

Cassidy B. Freeman Trust  
Clark D. Freeman Trust  
Crispin M. Freeman Trust  
PO BOX 1295  
Livingston, MT 59047-1295

Service Via Email:

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DOJ-ENRD  
999 18th Street, South Terrace Suite 370  
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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 125746-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** FREEMAN CRISPIN M TRUST  
PO BOX 1295  
LIVINGSTON, MT 59047 1295

FREEMAN CASSIDY B TRUST  
PO BOX 1295  
LIVINGSTON, MT 59047 1295

FREEMAN CLARK D TRUST  
PO BOX 1295  
LIVINGSTON, MT 59047 1295

**Priority Date:** DECEMBER 31, 1958

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** LITTLE MISSION CREEK

**Source Type:** SURFACE WATER

SOURCE INCLUDES AN UNNAMED TRIBUTARY OF LITTLE MISSION CREEK.

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NE	11	3S	11E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		S2	11	3S	11E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		E2SW	14	3S	11E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NENWSW	14	3S	11E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	11	3S	11E	PARK
2			S2	11	3S	11E	PARK
3			E2SW	14	3S	11E	PARK
4			NENWSW	14	3S	11E	PARK

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**Remarks:**

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LANDS.